

**UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS  
ACT OF 1994 (USERRA), PUBLIC LAW 103-353**

**TECHNICIAN INFORMATION/NOTIFICATION AND BENEFIT ELECTION RIGHTS**

1. USERRA (Public Law 103-353), enacted on 13 Oct 1994 and specifically 38 U.S.C. 2024, requires the Arizona National Guard to inform you of your rights and election opportunities prior to your entrance on active military service. Detailed information is contained in 5 CFR Part 353, Chapter 353 of the Federal Personnel Manual and related National Guard supplements.
2. Please read the following information concerning USERRA and your election rights and benefits. It is necessary that you complete the enclosed "USERRA Election Options" form and return it to HRO along with a Standard Form 52 (Request for Personnel Action), and a copy of your orders. **Your request cannot be processed unless this form is attached with your signature and date.**
3. **NOTIFICATION** Public Law 103-353 became effective on 12 Dec 1994 and prescribes the employment and reemployment rights of permanent and indefinite technicians who apply for return to technician employment from Title 10 or Title 32 active military service. **You are required to provide advance verbal or written notification to your supervisor/employer before entering military duty. If notice is not given, reemployment rights may be denied.**
4. **REEMPLOYMENT RIGHTS.** Under the Uniformed Services Employment and Reemployment Rights Act of 1994, you are entitled to retain employment rights to your technician position with the Arizona National Guard. USERRA revised the period of time a service member can be absent from his or her job with a civilian employer while retaining reemployment rights. Reemployment rights and benefits are limited to five (5) cumulative years of absence for military service from technician employment with the same employer (state), i.e. the Adjutant General of the Arizona National Guard. **[NOTE: Reemployment rights of temporary technicians are limited to the established not to exceed (NTE) date of the temporary appointment.]** Reemployment is defined as a return to technician employment from military Leave Without Pay (LWOP-US) **OR** reemployment after civilian service separation (SEPARATION-US) **when the military service interrupted otherwise creditable federal civilian service.** USERRA also clarified that all periods of service are cumulative with respect to the maximum absence from a position of employment, except for specified types of service which are exempt by the Act. Some exceptions to this 5 year limit include active duty (other than training) in time of war or national emergency (voluntary or involuntary); and active duty (other than for training) in support of operational missions activated under 10 U.S.C. 673b(12304) (voluntary or involuntary); and certain critical missions and requirements (voluntary and involuntary). **If you reemploy under USERRA, you are entitled to be treated as if you had never left for purposes of seniority, status, and pay as well as other rights and benefits determined by seniority (i.e. credit for trial period completion, within grade increases, cost of living increases, and leave category (SCD).**
5. The Office of Personnel Management (OPM) and the National Guard Bureau (NGB) regulations authorize you to select from the options available to you concerning your status while on active duty. **Under the provisions of USERRA, you will be carried on LWOP-US unless you elect to use other available leave or request to be separated from your technician position.**

**[NOTE:]**

- *FERS employees who elect to SEPARATE instead of LWOP **WILL NOT** be entitled to the FERS BASIC Employee Death Benefit payable to the spouse of a deceased FERS employee who meets certain eligibility requirements at the date of death. Also, would not receive Survivor (spouse) and/or Child Annuity and if not eligible for any of the above, a Lump Sum Benefit. To be eligible: Spouse must have been married to the employee for least 9 months at the time of death **or** be the natural parent of the deceased's child. Employee must have completed 18 months of creditable civilian service, and completed at least 10 years total of civilian and military service, and died subject to FERS. For 2003 the FERS Death Benefit is \$15,000 (increased by all COLA's), plus 50% of the employee's final salary (or high 3 average salary, if higher).*
- *CSRS employees who elect to separate verses LWOP **WILL NOT** be entitled to the Survivor (Spouse) Annuity and/or Child Annuity, and if not eligible for any of the above, a Lump Sum Benefit.] To be eligible: Spouse must have been married to the employee for 9 months at the time of death **or** have a child born of the marriage and employee must have completed at least 18 months of creditable civilian service and died while subject to CSRS deductions.]*

**The two reasons why a FERS employee would elect Separation-US is to withdraw FERS Retirement Contributions or to withdraw TSP Contributions. A civilian technician must be separated from their civilian technician position to make these two type of withdrawals.**

- a. **If you elect to be placed on LWOP-US, you must complete a SF-52. Attach the USERRA Election Options form, a copy of your duty orders, and forward it to the Human Resources Office (HRO) PRIOR to departing on active duty.**
- b. **If you elect to be separated from your technician position, you must provide written notice of your intent to this agency. The SF-52 may be used for this purpose. Attach the USERRA Election Options form, a copy of your active duty orders, and forward it to the HRO PRIOR to departing on active duty.**

**Separation-US does not effect your statutory reemployment/restoration rights. The absence is considered to be a leave of absence whether it is LWOP or Separation.**

**6. LEAVE STATUS:**

- a. You have the option of using military leave (LM) 120 hours of military leave each fiscal year and may have up to 240 hours of military leave for use during any one fiscal year, annual leave (LA) may be retained in your account until you return to technician status or if requested may be paid to you in a lump sum, compensatory time (CT), and/or leave without pay (KG) to cover the period of active duty. If you have a Time-Off Award (LY), those hours may also be used during a period of active duty. Preferably, leave should be taken in the following order: ***Time Off Award, Compensatory Time, Military Leave, and Annual Leave.*** ***Sick leave is NOT an appropriate paid leave to cover your absence to perform duty with the uniformed services. Any sick leave balance will be re-credited to your account upon reemployment.***
- b. You may use paid leave intermittently with leave without pay (LWOP-US) throughout your active duty period. However, one personnel action (SF-50) will be processed to document the use of LWOP-US to perform duty with the uniformed services. The effective date of the LWOP-US is the next workday after your paid leave ends. The fact that you elect to use paid

leave intermittently will not change this non-pay status. A second personnel action will be processed to document your “official return to duty when you are released from active duty. It will be effective the first day you are back to work at your technician position. Please **have your supervisor forward a SF-52 when you take intermittent leave and provide that information on the SF-52.** [NOTE: The HRO does not physically return you to duty to withdraw intermittent leave. Please have timekeeper record intermittent leave on a time card.]

- c. You are **NOT** authorized to use paid leave the day before or the day after a Federal holiday unless you are on paid leave for the entire pay period that included the Federal holiday; or to the point that your available paid leave was exhausted the day before or the day after the Federal holiday.
  - d. If you elect not to use your annual leave to cover the period of active duty, then you may choose to have your annual leave remain to your credit until you return to your technician position; OR you may request a lump-sum payment for all accrued annual leave. This provision applies whether or not you are placed on LWOP-US or Separate.
  - e. **ADDITIONAL 22 DAYS ENTITLEMENT OF LAW ENFORCEMENT LEAVE** each calendar year for **employees who perform full-time military service as a result of a call to active duty in support of a contingency operation** as defined in 10 U.S.C. 101(a) (13). The military pay received by an individual who has been activated in support of a contingency operation must be credited (less any travel, transportation, or other per diem allowances) against any federal civilian pay the employees received during the 22 workdays of military leave provided by U.S.C 6323(b). **An employee is entitled to the greater of his or her civilian or military pay, NOT BOTH.** However, an employee may choose to take annual leave instead of military leave in order to retain both civilian and military pay. **This amendment applies to military service performed on or after November 24, 2003.** A copy of his/her military orders, a certificate of attendance, and a leave and earnings statement(s) must be provided by the technician to their local payroll office.
  - f. **5 DAYS ADMINISTRATIVE LEAVE (CODE LV):** Employee activated for military service in connection with Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or any other military operation subsequently established under Executive Order 13223 is entitled to 1 week (40 hrs) of excused absence upon employee reporting back for federal civilian duty or notify the agency (HRO) of his or her intent to return to civilian duty on a specific date. Employee may receive 5 days (40 hrs) of excused absence **only one time**, regardless of the number of military activations. The 5 days of excused absence is a continuous period of paid time off.
7. **EMPLOYEE BENEFITS.** [NOTE: Please be advised that deductions continue to be taken from your pay for employee benefits – health/life insurance, TSP, and retirement contributions when you elect to be covered by any paid leave.]
- a. **Federal Employee Health Benefits (FEHB).** Whether you are on LWOP-US or separate your FEHB coverage will continue for up to 18 months **unless** you elect to terminate the coverage. If you do not take action to terminate the coverage, your enrollment will continue and you will be responsible for the premiums. The 18-month period begins the day you are separated or placed on a leave of absence (regardless of pay status) from your technician position to perform the active duty.

- (1) **Continuing Enrollment:** You will be liable for the employee share of the premium for the first 12 months; and for 102% of the full FEHB rate (employee and government share plus a 2% administrative charge) for the additional six months. (*NOTE:* To be entitled to the additional six-month coverage, you must continue to be eligible for reemployment rights.) Payment for coverage may be made while on non-pay status or when you return to technician status:
- (a) If you elect to pay the premiums while on non-pay status, you will be provided with the payroll office address of where to send your check. The minimum payment will be the employee's share of the premium for two pay periods.
  - (b) If you elect not to pay the premiums while on non-pay status, the payroll office will begin to deduct two employee premiums each pay period (one for the current payment and one towards the debt) until the debt is repaid.
- After the 18-month period, your coverage will be terminated. You will be entitled to a 31-day extension of coverage (at no cost to you) during which you may convert to an individual policy offered by the carrier of your health plan. FEHB coverage will be reinstated on the day you return to technician status, ***unless you complete the FEHB Waiver Request Form, provided as an enclosure to this letter, to exercise Transitional TRICARE PRIOR to HRO receiving a Return- To- Duty SF-52. You must state the date your Transitional TRICARE ends, the date you wish your FEHB to be reinstated, and sign and date.***
- (2) **Terminating Enrollment:** If you elect to terminate your enrollment before you go on active duty, the termination will be effective at the end of the day before you separate or are placed on a leave of absence (paid/unpaid leave). Requesting termination during the 18-month period will depend on whether or not you are participating in the FEHB's premium conversion.
- (a) If you are not participating in premium conversion, you have the option to terminate your health coverage at anytime during the 18-month period. The effective date of the termination will be at the end of the pay period in which you request is received by the HRO.
  - (b) If you are participating in premium conversion, you may not terminate your coverage at any time during the 18-month period. However, the start or end of an unpaid leave of absence by you or your spouse is a qualifying life event (QLE) for premium conversion. This means that within 60 days of beginning your LWOP-US, you have the option to terminate your coverage and/or waive your participation in premium conversion.
- If you waive participation in premium conversion within this 60-day timeframe, you may then terminate your health coverage at any time during the 18-month period and it will not be considered a break in coverage.

- If you don't waive participation in premium conversion within the 60-day timeframe, you must wait for a Qualifying Life Event (QLE) or the next open season to request termination.
- Termination is subject to a 31-day temporary extension of coverage (at no cost to you) and the right to convert your coverage to a non-group plan offered by the carrier of your plan. Termination is not considered a break in service for continuing FEHB coverage into retirement. However, the period during which the termination is in effect is not counted towards the five-year participation requirement. However, if enrolled in Tricare while on active military duty, service **does** count toward the 5-year participation requirement. In addition, you are **NOT** eligible for Temporary Continuation of Coverage (TCC). Terminated FEHB coverage will be restored on the day you return to technician status.

(3) **Active Duty In Support of Contingency Operations.** The Department of Defense **will** pay the employee share of the FEHB premiums for any covered technician who is called to active duty in support of a contingency operation. The maximum period of eligibility for each period of active duty is 18 months. In order to be eligible for this provision, you need to meet **ALL** of the following criteria:

- Be enrolled in the FEHB and elect to continue that enrollment.
- Be a member of a reserve component of the armed forces
- Be called or ordered to active duty (voluntarily or involuntarily) in support of a contingency operation as defined in section 101(a)(13) of Title 10, USC (i.e., Operations Joint Endeavor, Joint Guard, Southern Watch, Northern Watch, Enduring Freedom, Noble Eagle, etc)
- Be placed on leave without pay or separated from service to perform active duty.
- Serve on active duty for a period of more than 30 consecutive days.

b. **Federal Employees Group Life Insurance (FEGLI).**

- (1) If you are placed on LWOP-US to perform military service, FEGLI coverage (Basic and all Optional Coverage) continues for up to 12 months at no cost to you. The coverage will then terminate, subject to a 31-day temporary extension of coverage with a right to convert to an individual policy.
- (2) If you separate to perform military service, you can keep your FEGLI coverage for up to 12 months, or until 90 days after your military service ends, whichever date comes first. When the coverage terminates, you will be entitled to a 31-day extension of coverage and right to convert.
- (3) If you are killed on active duty, death benefits are paid to your beneficiaries. Accidental Death and Dismemberment (AD&D) benefits are also payable under Basic Life and Optional A coverage, unless you were in actual combat (or unless nuclear weapons are being used) at the time of the injury that caused your death. Accidental death benefits are in addition to regular death benefits. Even if accidental benefits are not payable, the regular death benefits are payable.

- (4) **Your FEGLI coverage will be reinstated on the day you return to technician status.** There is no opportunity to elect additional coverage unless you are separated for at least 180 days.

c. **National Guard Association of the United States (NGAUS) Insurance Trust.**

- (1) **Disability Coverage.** If you are on leave without pay status for 30 days or less, coverage will continue at no cost to you. However, if the non-pay extends beyond 30 days, the coverage will be suspended until you return to technician status. Upon return to duty, you must submit a letter to your Customer Service Representative (Payroll Office) to request reinstatement. If coverage is not restarted within 30 days of your return to duty, you will have to reenroll; which will require approval of the insurance company. If you elect to separate to perform the military service, the disability coverage will terminate. You may reenroll upon returning to technician status.

(2) **Life Insurance Coverage.**

- (a) **TermLife and GuardLife.** The insurance administrator (ReliaStar) will waive the premium for the first 90 days on leave without pay status. If death occurs during this 90-day period, ReliaStar will honor the claim. There will be no lapse in coverage and you will not need to repay the premiums when you return to technician status. If the non-pay status extends beyond 90 days, ReliaStar will begin to direct-bill you. You will be responsible for keeping the coverage in force by ensuring that the premiums are paid (i.e. have a spouse make payment). Should you elect to separate, you have the option to terminate the coverage or continue it on a direct-billed basis with the insurance company.
- (b) **ValueLife and Universal Life.** There is **no waiver** of premium should you elect to go on leave without pay status. The coverage will be direct-billed by the insurance company. You are responsible for keeping the coverage in force by ensuring that the premiums are paid (i.e. have spouse make payment. Should you elect to separate, you have the option to terminate the coverage or continue or continue it on a direct-billed basis with the insurance company.

c. **Thrift Savings Plan (TSP).**

- (1) No contributions can be made to the TSP while on non-pay status or separation from your technician position, retroactive contributions and TSP elections may be made to cover the period of service. ***To make up missed TSP contributions, you must submit a written request to HRO within 60 days of the date of your reemployment/restoration to civilian service. [NOTE: If you contribute to a Military TSP account while on active duty, those contributions will reduce/offset the amount of your retroactive contributions that can be made to your Civilian TSP account.]***

- (a) Please complete the attached TSP form “Technician Request For Thrift Savings Plan (TSP) Contributions” even if you are not making retroactive payments. FERS employees will be eligible to receive government matching contributions (the automatic 1% matching contributions, plus up to 4% matching contributions which is based on contributions made to your Uniformed Services TSP account during the period you were LWOP-US.
- (b) If you want to make TSP retroactive payments, attach a copy of all military and civilian technician LESs and send to the HRO for 1) estimate of amount eligible for make-up contribution, 2) possible entitlement of 1% up to 4%, with lost earnings, and 3) entitlement to Agency 1%, with lost earnings.
- (c) If you wish to make changes to your TSP election, attach and complete TSP-1 for every TSP Open Season missed, otherwise inform HRO that you wish to continue TSP contributions as elected at the time you entered into active military service.
- (d) If you wish to also make a military deposit, please send HRO a copy of all military orders and DD 214's.

(2) **TSP LOANS:**

- (a) If you elect to be placed on LWOP-US, your loan payments will be suspended until you return to a pay status. Although the loan payments will not be due before then, interest will continue to accrue for the entire period. You cannot repay your Civilian TSP loan by making loan allotments from your uniformed services pay. The maximum time limits for repayments (five years for general purpose loans or 18 years for residential loans) will be extended by the length of your military service. In order for these rules to apply, the TSP Service Office must be notified with the beginning and ending dates of your non-pay status. If the TSP Service Office is not notified of your non-pay status, your loan payments can only be suspended for up to one year due to the Internal Revenue Service (IRS) requirements. If no payments are made at that time, the TSP Service Office will request that you repay your loan in full or you will be liable for income tax on the outstanding balance of your loan. ***If you have a TSP loan, please complete the attached form TSP-41 and forward it to HRO along with your SF-52 and orders. HRO will process the form and fax it to the TSP Service Office.***
- (b) If you elect to separate to perform the military service, you will be required to repay your loan in full, including interest, or the loan will be declared a taxable distribution. An outstanding loan may delay the processing of a withdrawal from your TSP account if you have requested to separate, you must repay any outstanding loans in full in the account that you will be closing, before the two accounts can be combined.

- (3) **TSP Catch-Up Contributions.** On November 27, 2002, Public Law 107-304, permitted eligible Thrift Savings Plan participants to make catch-up contributions into their TSP accounts beginning in or after the year in which the employee turned age 50. Participant ***must be in a pay status*** and be ***contributing the maximum*** to TSP contribution percentage allowed by his or her retirement coverage ( 2004 - CSRS 9% & FERS 14%)or

contributing an amount that will cause him or her to reach the Internal Revenue Service elective deferral limit by the end of the year. Because catch-up contributions are supplemental, they ***do not count against either the regular TSP contribution limits or the IRS elective deferral limit.*** (2004 Regular Contributions **\$13,000** + 2004 Catch-up Contributions **\$3,000** = **\$16,000**). If you are enrolled in TSP Catch-up Contributions as a civilian employee, you can elect to make up contributions to your civilian TSP account when you return from active duty. You would need to submit a new TSP-1-C. Also, while on active duty you may contribute to your uniformed services TSP account by submitting a TSP-U-1-C to your military personnel office. [***NOTE:*** Regular Contributions and Catch-up contributions for civilian TSP and uniformed services TSP must **not exceed** the \$16,000 IRS Limit for 2004.

- d. **Flexible Spending Account (FSA).** If you are enrolled in The Health Care Flexible Spending Account (HCFSA) and go on LWOP-US, the National Guard will not contribute to the allotments during the LWOP period. **You can elect to:**

- (a) Prepay the allotments, which will increase the per pay amount.
- (b) If you *do not prepay* your election, your FSA account will be frozen and you will not be eligible for reimbursement for any expenses incurred during that period until the Plan Year ends or you return to active status and begin making allotments again. When you return your allotments will be made on a “catch-up” basis, which means your allotment will be doubled until such time you are current. If doubling the amount is not sufficient to “catch-up” by the end of the Plan Year, your allotment will be increased proportionately over the pay dates remaining in the Plan Year; **OR**
- (c) Pay the allotments directly on an after-the-tax basis.

**[NOTE:** *LWOP is not a Qualified Status Change and you will not be permitted to change your election amounts upon return to service].*

- e. **RETIREMENT—Civil Service Retirement System (CSRS) OR Federal Employees Retirement System (FERS)**

- (1) Your active duty military service does not automatically count towards retirement service credit. For the period to be creditable, you will need to make a military service deposit upon reemployment/restoration. The only exception to this is if you were first employed under CSRS prior to 1 October 1982. For these technicians, the active military service is creditable for retirement. However, if the deposit is not made and the technician is eligible for Social Security benefits at age 62, the retirement annuity will be recomputed to remove the active duty service.

- (2) Under USERRA provisions, the military service deposit will be the **LESSOR** of:

- (a) Seven (7) percent (CSRS technicians) or three (3) percent (FERS technicians) of the estimated *military* earnings during military service; **OR**



- (b) The CSRS or FERS employee contributions that would have been withheld from your Federal *civilian* pay had you not left to perform military service (CSRS – 7%, FERS (.80%).
- If the military deposit is paid before the interest accrual date (within three (3) years of returning to a covered position), no interest is charged on the military deposit.
- (3) Under LWOP, there is no provision for a refund of retirement contributions. If you elect to separate, you may receive a refund of your retirement contributions. However, taking a refund will void all rights (to include survivor's benefits) to the retirement system. In addition, FERS technicians who take a refund will never be able to make a redeposit, and will never receive credit for the refunded period.
- (4) Upon reemployment/restoration previous retirement coverage continues.
- (5) **Active Duty Retirement.** Military members who will accumulate 7300 active duty points may qualify for a regular military retirement. A member who has accumulated 7300 active duty points and is qualified for a regular (active duty) retirement, may not receive a non-regular (reserve) retirement. This service **cannot be counted** towards a civil service and military retirement simultaneously. The member must then waive receipt of pay for one of the retirements.
- (6) **Retirement Refunds.** Under certain circumstances you may withdraw your retirement contributions. Please contact the Employee Relations Section of the HRO for specific information. Under FERS rules, contributions may not be deposited to reclaim service covered by the refund.
8. **RETURN TO CIVILIAN DUTY.** A technician who enters active military duty (voluntarily or involuntarily) from any position, including a temporary position, has full job protection, provided he or she applies for reemployment within the following time limits:
- a. If on active duty for less than 31 days, you must report back to work at the beginning of the next scheduled workday following release from active duty and the expiration of eight hours after a time for safe transportation back to your residence.
  - b. If on active duty for more than 30 days, but less than 181 days, you must apply for reemployment within 14 days of release by the military service.
  - c. If on active duty for more than 180 days, you have 90 days in which to apply for reemployment.
- If your active duty service is less than 91 days, and you request reemployment, you will be placed in the position for which you qualify and would have attained if not for the interruption by military service.
  - If your active duty service is for more than 90 days, and you request reemployment, you will be placed in the position for which you qualify and would have attained if not for the interruption by military service, if available **or** one of like seniority, status, and pay.

- Upon reemployment/restoration, a technician generally is entitled to be treated as though he or she had never left for the purpose of rights and benefits based upon length of service. This means that the technician must be considered for career ladder promotions, and the time spent in the military service will be credited for seniority, successive within-grade increases, probation, career tenure, annual leave, accrual rate, and severance pay. ***(A technician who is on a temporary appointment serves out the remaining time, if any, left on the appointment. The active duty period DOES NOT extend the temporary appointment.)***
  - A technician performing active military duty is also protected from reduction-in-force (RIF) and may not be discharged from employment for a period of one year following separation, except for poor performance, conduct, or for the suitability reasons.
9. **JOB APPLICATIONS**. If you wish to have the HRO submit your name for consideration for vacant technician positions while you are on a tour of active duty in excess of one year, you must:
    - a. Have advised the HRO in writing of the type of vacancies for which applications should be filed in your behalf.
    - b. Have left a copy of your resume with the Staffing Section of the HRO in the format prescribed in Section 5 of the Merit Placement Plan dated 1 October 1998.
    - c. Be within period of eligibility for restoration to a Federal technician position.
    - d. Be on an active duty tour other than a Title 32 AGR tour with duty in the State of Arizona.
  10. **PERSONNEL FILES**. Your Official Personnel File, Employee Performance File and Supervisor's Record Folder will be retained by this agency until the expiration of your reemployment rights.
  11. **BENEFICIARY FORMS**. Please update beneficiary forms if needed (**FEGLI: SF 2823, TSP: TSP 3, Unpaid Compensation: SF 1152, CSRS: SF 2808; FERS Lump Sum: SF 3102.**

**[NOTE: If there is no designated beneficiary living, benefits payable after the death of an employee will be payable to the first person(s) below who are alive on the date title to the payment arises:**

- a. To the widow or widower.
  - b. If none, to the child or children in equal shares, with the share of any deceased child distributed to the descendants of that child
  - c. If none, to any surviving parents.
  - d. If none, to the executor or administrator of the estate.
  - e. If none, to the next of kin who is entitled under the laws of the state in which the deceased employee was domiciled on the date of death.
12. Good luck and please **keep us informed of your current address**. If you need further clarification on any of your rights or benefits, please call our office at **602-267-2787 or 602-267-2475 (DSN 853-2787 or 853-2475)**. Questions on reemployment/restoration should be directed to the HRO Staffing Section at (602) 267-2879. **Please remember**

**you are required to process out through the HRO when leaving on an extended active duty tour.**